



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB

Item #

2/15/07



MEMORANDUM

DATE: January 26, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

Catherine Conlon, Supervisor *CC*
Development Review Division

FROM: Richard A. Weaver, Coordinator (301) 495-4544 *RAW*
Development Review Division

REVIEW TYPE: Preliminary Plan Review

APPLYING FOR: Resubdivision of Lot 5, Block A Moxley Estates

PROJECT NAME: Moxley Estates

CASE #: 12005063A (formerly 105063A)

REVIEW BASIS: Chapter 50, Sec. 50-29 (b)(2), Montgomery County Subdivision Regulations

ZONE: RDT

LOCATION: On the south side of Clarksburg Road, approximately 2,300 feet northeast of the intersection with Moxley Road

MASTER PLAN: Agricultural and Rural Open Space

APPLICANT: Oscar Fuster

ENGINEER: Benning and Associates

ATTORNEY: Jim Clifford, Esq.

FILING DATE: September 6, 2006

HEARING DATE: February 15, 2007

STAFF RECOMMENDATION: Approval of one lot and one outlot, pursuant to Section 50-29(b)(2), subject to the following conditions:

- 1) Approval under this preliminary plan is limited to one lot and one outlot.
- 2) Compliance with the conditions of the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
- 3) Record plat to contain a note, "Outlot A, created hereon, is to remain unbuildable and its land area cannot be combined with adjacent lots to create density for additional lots. Outlot A cannot be converted to a buildable lot under the minor subdivision process."
- 4) Record plat to reflect a category I forest conservation easement over the entirety of forested area on the lot and outlot, and all stream buffer areas south and west of the existing driveway on Lot 5, as further detailed on the final forest conservation plan.

EXECUTIVE SUMMARY

The Planning Board approved this resubdivision at a regularly scheduled public hearing on July 14, 2005 for one lot and one outlot. The lot and outlot have not been recorded by plat. This amendment seeks to adjust the approved lot line separating the lot and outlot. The adjustment results in the proposed lot having the smallest frontage in the neighborhood. Since this is a resubdivision, staff has evaluated the frontage as it relates to the resubdivision criteria. We support the proposed revision based on the fact that the proposed frontage does not result in a lot which is out of character with the neighborhood.

SITE DESCRIPTION (Attachment A)

The subject property (Lot 5, Block A) is a 25.5 acre lot recorded by plat in 1996 as part of a subdivision containing two other lots (Lots 4 and 6, Block B, Moxley Estates). The property is zoned RDT and is located on the south side of Clarksburg Road, approximately 2,300 feet northeast of the intersection with Moxley Road. A house currently exists on the subject lot which is accessed by private driveway from Clarksburg Road. A tributary of Bennett Creek traverses the southern border of the lot. The stream valley of this tributary is mostly forested.

PROJECT DESCRIPTION (Attachment B)

On July 14, 2005 the Planning Board approved an application to resubdivide the 25.5 acre subject lot into a 12.2 acre lot, and a 13.3 acre outlot; neither of which has been recorded by plat. The applicant has now decided to amend the previously approved plan to reconfigure the lot line between the approved lot and outlot. The request increases the acreage of the lot to 13.1 acres, and reduces the outlot to 12.4 acres. The area within the proposed outlot is currently used by the owner of adjacent Lot 6 for open space and equestrian uses under a private agreement between the two property owners. Per that agreement, it is the intent of the owner of the subject property to convey the proposed outlot to the owner of Lot 6, who will continue these uses.

DISCUSSION

Master Plan Compliance

The Agricultural and Rural Open Space Master Plan (AROS) does not specifically identify the subject property for discussion but gives general guidance and recommendations regarding zoning and land use. The AROS plan supports the continuation of agricultural practices as the preferred use in the RDT zone but does allow low density residential development. This plan proposes both a continuation of agricultural practices and the existing residential use that already exists on the property. The revised plan continues to conform to the AROS Master Plan.

Conformance with Section 50-29(b)(2)

A. Statutory Review Criteria

In order to approve an application for resubdivision, the Planning Board must find that each of the proposed lots complies with all seven of the resubdivision criteria, set forth in Section 50-29(b)(2) of the Subdivision Regulations, which states:

Resubdivision. Lots on a plat for the Resubdivision of any lot, tract or other parcel of land that is part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

B. Neighborhood Delineation (Attachment C)

In administering Section 50-29(b)(2) of the Subdivision Regulations, the Planning Board must determine the appropriate “neighborhood” for evaluating the application. In this instance, the Neighborhood submitted by the applicant and agreed upon by staff consists of 4 lots. The neighborhood includes all platted lots that abut the subject property and one lot immediately south of the site across Moxley Road. All other properties in close proximity to the subject property are unplatted parcels and are not included in the neighborhood consistent with staff and Planning Board practice. This is the same neighborhood reviewed during the previous Planning Board review of this proposal.

C. Analysis

Comparison of the Character of Proposed Lots to Existing

In performing the analysis, Staff applied the above-noted resubdivision criteria to the delineated neighborhood. As set forth below and as shown in the attached tabular summary (Attachment D), staff finds that the reconfigured lot is consistent with the character of the existing lots in the defined neighborhood. The outlot is not reviewed for compliance with the resubdivision criteria since it is not a buildable entity. It is consistent with previous staff practice

and guidance from the Planning Board not to include outlots in the neighborhood comparison for resubdivision.

Size: The proposed lot is of the same character with respect to size as all lots in the neighborhood.

Lots in the neighborhood range in size from 10.0 acres to 31.1 acres. This application proposes a 13.1 acre lot that is within the range of the overall neighborhood. The proposed lot is of the same character as the neighborhood lots defined by staff and the applicant.

Area (buildable): The proposed lot is of the same character with respect to area as the lots in the neighborhood.

The buildable area of the proposed lot, at 11.3 acres, is within the range of lot areas of the existing neighborhood and is therefore, of the same character with respect to area.

Shape: The proposed lot is of the same character with respect to the shape of lots in the neighborhood.

The lot shapes in the existing neighborhood are either rectangular or irregular. The proposed lot will be generally rectangular and of the same character with the other lots in the neighborhood.

Width: The proposed lot is of the same character with respect to width as the other lots in the neighborhood.

Lot widths in the neighborhood, as measured at the building frontage line, range from 670 feet to 1,150 feet. The proposed lot is within this range at 713 feet. The lot is of the same character with respect to width at the building line.

Alignment: The proposed lot is of the same character with respect to alignment of all lots in the neighborhood.

While it is difficult to generalize how each of these large lots align to the public right-of-way, they are best described as either angled or perpendicular and the proposed lot alignment is consistent with the neighborhood.

Frontage: The proposed lot is of the same character with respect to frontage as the lots in the neighborhood.

Neighborhood lot frontages range from 433 feet to 2,362 feet. Proposed Lot 1 has 388 feet of frontage. Although it doesn't fall within the neighborhood range, it is not, in staff's opinion, out of character. The nature of the lots in this agricultural area is that they are quite large and irregular in shape, with varying alignments to the street front. The lots in the neighborhood can't be described as "cookie cutter" as one might describe a typical grid pattern found in a higher density residential neighborhood in the down-county, where frontages can be

essentially identical. The frontage of proposed Lot 1, while 45 feet less than the next narrowest lot, will not appear to be any different from other lots as one travels Clarksburg Road. Because of the nature of the existing neighborhood, the proposed lot is of the same character with respect to frontage as the lots in the neighborhood.

Suitability: The proposed lots have been deemed suitable for residential development.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections, including the requirements for resubdivision, as discussed above. Access and public facilities will be adequate to support the proposed lots and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

The lots were reviewed for compliance with the dimensional requirements for the RDT zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. No additional buildable lots are possible for the Moxley Estates subdivision under current Subdivision Regulations or the Zoning Ordinance because all available density (3 lots) from the parent parcel was used when the original lots were platted in 1996. Another adjacent lot, Lot 3, Block A, was the subject of a separate plat and also cannot resubdivide for additional lots. Staff has recommended that a note (condition #3) be placed on the plat to memorialize this restriction so that future owners of the outlot are aware of these limitations.

Environment

The property is subject to the forest conservation law and complies with the same forest conservation plan that was approved as part of the previous Planning Board action. Existing forest will be protected with a Category I forest conservation easement. The easement language will be crafted to specifically restrict the pasturing of horses and other livestock from the areas within the easement but will allow recreational riding. The forest conservation plan identifies forest that will not be placed within an easement, specifically that segmented area north of the driveway serving the house on Lot 5.

Transportation

No development is proposed by this application. No traffic study was required.

CONCLUSION

Section 50-29(b)(2) of the Subdivision Regulations specifies seven criteria with which resubdivided lots must comply. They are street frontage, alignment, size, shape, width, area and suitability for residential use within the existing block, neighborhood or subdivision. As set forth above, the proposed lot is of the same character as the existing lots in the defined neighborhood with respect to each of the resubdivision criteria. Therefore, the proposed resubdivision complies with Section 50-29(b)(2) of the Subdivision Regulations. The proposed subdivision meets all other requirements of the Subdivision Regulations (Chapter 50). Staff recommends approval of the preliminary plan with the specified conditions.

Attachments

Attachment A – Neighborhood Vicinity Map
Attachment B – Proposed Development Plan
Attachment C – Neighborhood Delineation
Attachment D – Tabular Summary

No citizen correspondence has been received up to this point.

TABLE 1: Plan Checklist and Data Table

Plan Name: Moxley Estates				
Plan Number: 12005063A				
Zoning: RDT				
# of Lots: 1				
# of Outlots: 1				
Dev. Type: Standard				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval on the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sq. ft.	13.1 acres is the minimum proposed	RW	1/30/2007
Lot Width	125 ft.	Must meet minimum	RW	1/30/2007
Lot Frontage	25 ft.	Must meet minimum	RW	1/30/2007
Setbacks				1/30/2007
Front	50 ft. Min.	Must meet minimum	RW	1/30/2007
Side	20 ft. Min./40 ft. total	Must meet minimum	RW	1/30/2007
Rear	35 ft. Min.	Must meet minimum	RW	1/30/2007
Height	50 ft. Max.	May not exceed maximum	RW	1/30/2007
Max Resid'l d.u. per Zoning	1 dwelling unit/ 25 acres	1 dwelling units/ 25.5 acres	RW	1/30/2007
MPDUs	N/A			
TDRs	N/A			
Site Plan Req'd?	No			
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes		RW	1/30/2007
Road dedication and frontage improvements	Yes		Agency letters	1/9/2007
Environmental Guidelines	Yes		Staff memo	6/25/2005
Forest Conservation	Yes		Staff memo	6/25/2005
Master Plan Compliance	Yes		RW	1/30/2007
Other				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	N/A			
Water and Sewer (WSSC)	N/A			
Well and Septic	Yes		Agency letter	6/25/2005
Local Area Traffic Review	N/A			
Fire and Rescue	N/A			

MOXLEY ESTATES (12005063A)

Attachment A



Map compiled on September 12, 2006 at 1:16 PM | Site located on base sheet no - 239NW11

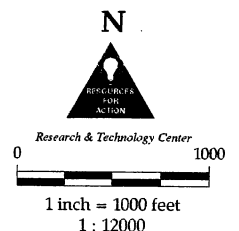
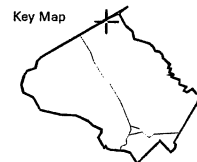
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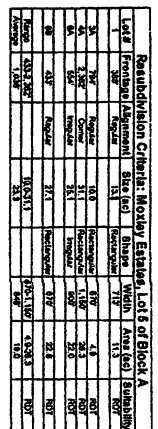
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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

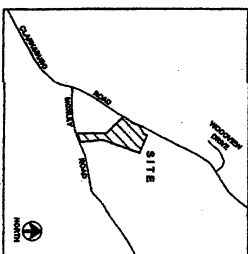


TYPE of LOGGING METHOD
CPL/PC, 6-foot contour intervals
No. sheet 238NW11



THE PURPOSE OF THIS AMENDMENT IS TO REVISE THE LOT LINE WHICH SEPARATES THE ONE LOT FROM THE OUTLOT

VICINITY MAP



PREPARED FOR:
D. OSCAR FUSTER
26501 RIDGE ROAD
DAMASCUS, MARYLAND 20872
301-253-4500

NEIGHBORHOOD MAP
MOXLEY ESTATES (LOT 5, BL. A)
 Montgomery County, Maryland



Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)942-0240

date: January 2005

scale: 1" = 200'



06/18/00
06/22/00 (or later)

SHEET 1 OF 1

Attachment D

Resubdivision Criteria: Moxley Estates, Lot 5 of Block A							
Lot #	Frontage	Alignment	Size (ac)	Shape	Width	Area (ac)	Suitability
1	388'	Regular	13.1	Rectangular	713'	11.3	RDT
3A	794'	Regular	10.0	Rectangular	670'	4.9	RDT
4A	2,362'	Corner	31.1	Rectangular	1,150'	26.3	RDT
6A	554'	Irregular	25.1	Irregular	900'	22.0	RDT
6B	433'	Regular	27.1	Rectangular	670'	22.8	RDT
Range	433-2,362'		10.0-31.1		670-1,150'	4.9-26.3	RDT
Average	1,036'		23.3		848'	19.0	